

**CITY OF NEWARK
DELAWARE**

COUNCIL WORKSHOP MINUTES

October 28, 2015

Those present at 6:00 p.m.:

Presiding: Mayor Polly Sierer
District 1, Mark Morehead
District 2, Todd Ruckle
District 3, Rob Gifford
District 4, Margrit Hadden
District 6, A. Stuart Markham (arrived at 6:03 p.m.)

Absent: District 5, Luke Chapman

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
Deputy City Manager Andrew Haines
NPD Chief Paul Tiernan
Community Affairs Officer Ricky Nietubicz

1. The Council workshop on proposed changes to the noise ordinance began at 6:00 p.m. in the Council chamber.

2. Ms. Sierer welcomed all to the workshop and reported that Mr. Chapman would not be present as he had a previous engagement scheduled prior to the announcement of this meeting and that Mr. Markham would be arriving late.

Ms. Houck reviewed the last noise workshop which resulted in a long list of items prepared for consideration and review. She shared that list with various staff members as well as Compliance Environmental to ensure everyone was on the same page and who was working on what aspect of the list created at the last meeting. The primary thing that she was tasked to do was reach out to San Diego, CA regarding their ordinance.

She reported her outreach resulted in a response from a project manager within their development services group. Information and links were shared as well as some information on difficulties that they have been experiencing in enforcing their noise conflicts, which were mostly with outdoor entertainment venues and not comparable issues to Newark. Staff also was advised to speak to a person within their Code Enforcement. That occurred and she was able to share the information with Mr. De Rocili. Mr. De Rocili reached out and had conversations as well with San Diego. With that being said, the representatives from San Diego were interested in hearing how Newark moved forward and the City would share the information with them. They had not made any changes recently, although they had some things in mind.

Mr. De Rocili stated one of the things that he was asked was to look at the history of the San Diego ordinance. He prepared a table to compare the original ordinance, established in 1973, and the current ordinance. The residential numbers had some land use definition changes where residential was now single family residential. In 1973, they had daytime, evening and nighttime criteria in the original ordinance. They kept that format, but there had been changes to their ordinance. In 1973, there were separate manufacturing and industrial/agricultural noise limits. Currently those categories were combined into one, which was 75 dB. The only other changes were in the commercial numbers. In 1973, commercial was listed in the daytime as 60 and 55 dB. Now, the number increased to 65 and 60 dB. This indicated it was not as stringent in 1973. Mr. De Rocili tried to determine how San Diego arrived at the original ordinance and if they did a study of the city. The individuals he spoke with did not know. There was nothing readily available in the public record without traveling to dig through paper files.

When looking at the current ordinance, the City needed to understand how San Diego applied the ordinance as it was different than the City's ordinance. The City's ordinance stated that the measurement would be taken at the receiving property, not the noise source. The number would then be applied and it would be determined if the source was above or below it. That was not how they did things in San Diego. In San Diego, they took an average of the two numbers that corresponded to the zones. That average became their regulatory noise limit.

For example, for a single family residential zone, in a situation where they were having a noise complaint with a manufacturing facility next to them, at night time they would go on the property boundary, take a measurement and compare the measurement to a number. They arrived at that number by averaging the 75dB limit for manufacturing with the 40dB limit for single family residential for a total of 57.5dB, which would be the limit. If they exceeded that, there would be an issue. In the City's ordinance, if the situation were the same, the enforcement number would be the night time limit for single family residential, which was 52dB during night time hours. So in a situation with single family residential and manufacturing, the City of Newark was more stringent than San Diego.

Another example would be single family residential zoning and manufacturing during the day time. San Diego would average the 75dB limit for manufacturing with the 50dB limit for single family residential for a total of 62.5dB, which exceeded the City's limit of 57dB. He felt there were many moving parts to these ordinances and how they were applied mattered in regards to the noise limit regulatory requirements. Mr. De Rocili noted that San Diego was more stringent than Newark in the category of single family residential next to commercial at night time as San Diego was 50dB and Newark was 52dB.

San Diego officials noted in terms of their complaints, they may get six to eight complaints in a year. Those complaints were usually handled during the day time. The Code official went out with the sound level meter and made the determination. If it was a complaint that occurred at night, the police took care of the issue. They stated their largest complaint was noise from pool pumps. Mr. De Rocili asked why they thought that was a problem and they said that they thought the 40dB limit was below their background level. It was very hard to deal with because when they measured numbers above background, in this case a pool pump, they could actually be under or below values of the reading. Therefore, it was difficult for them to enforce. Mr. De Rocili asked if they had done any studies to determine background in the city and they said no. He asked what they thought their background was and they stated somewhere between 45dB and 50dB.

He asked about their legal experience in terms of enforcement and they really did not know, as the Code individuals did their work and passed it on to the legal department, where they did their part. They noted dog barking issues. In terms of issues where they were not using a meter, they referenced parties and similar kinds of complaints. They said typically the police would enforce those issues.

Mr. De Rocili inquired where else they would use their meter typically and they said that residential complaints with air conditioners were a problem because of neighbors complaining against neighbors and Code Enforcement had to try to determine the boundary and which air conditioner was creating the noise. They were using the very stringent 40dB at night time to determine that. Strip mall deliveries and outdoor activities during the day were others where meters were used.

Mr. De Rocili stated he was tasked with looking at the 57 Delaware municipalities. He supplied a comparison table (contained in the record). The municipalities listed as "no requirement" meant there was no number assigned, but had such language as no yelling, etc. If there was an Ordinance with values, it was listed as such.

Camden and Dover used different criteria. They did not use a system of numbers, which in Mr. De Rocili's opinion was easier to use. They used a floating criteria system based on frequency. It was a little difficult to use as sounds were made up of different frequencies of spectrum. A sound source with a higher frequency "weighed" a little differently in that calculation of that noise limit than one that had a lower frequency. That determination was based on a calculation. It had to be determined if it was continuous

noise, intermittent noise, etc. Elsmere and the City of New Castle had similar ordinances to the City of Newark.

Mr. De Rocili noted the town of Rehoboth went through a transition period this year with its noise ordinance and made some updates.

3. Ms. Sierer opened the floor to questions from Council.

Ms. Hadden confirmed Wilmington listed 8 PM – 7 AM in residential areas as 55dB.

Mr. Ruckle confirmed that Newark had the most stringent noise ordinance with the exception of Rehoboth commercial. Mr. De Rocili stated that Newark, Elsmere and New Castle were very similar and clarified that one of New Castle's limits was 85dB although it appeared as 8.5dB in some spots due to a typo.

Mr. Morehead asked whether a one hour or a 24 hour equivalent code was stricter. Mr. De Rocili replied the one hour would be variable because of the changes that happened every 24 hours (day time versus night time noise). Night time noise was typically less. Noise tended to vary through time, even hour by hour. That was why averages were used. If a criteria was created where to regulate hour by hour, a formula would have to be created to make it useable. An hourly framework could be more stringent, but it would take a lot of work to do that. He was not aware of any ordinance that used an hour by hour format as they were typically averages. Mr. Morehead stated he read the San Diego ordinance. It spoke very specifically of one hour average sound level, so he thought their numbers were based on a more stringent test than Newark. Mr. De Rocili disagreed and stated the one hour meant that the Code Enforcement officers went out and collected information over one hour period when a complaint was received. Whenever that Code Enforcement person arrived to the site, they typically did their noise and meter work during the day, collected the measurement over an hour and applied it against this criteria. Mr. Morehead replied Newark's code was a 24-hour and asked if a person would need to keep a meter there for 24 hours under that logic. Mr. De Rocili replied that would not be the case because if readings were done over 24 hours over several days, the data would be a lot better than taking a shorter term of measurement. However, he would say that if the measurements were done for 24 hours or beyond, there would be a better stream of data to review.

Mr. Morehead stated if he had a problem with the current City ordinance and got a good lawyer, he would imagine that the City would have to take a 24 hour reading to get that average and have it stand up in court. Mr. De Rocili replied it was his experience, the first questions were was it a continuous or intermittent noise and was it changing. That was the first thing that needed to be determined when measurements were done. If it was continuous noise and it was not going to vary, then a shorter time frame could be used. But if the noise was more intermittent and varying, it would be better to extend the measurement time longer to make it more technically defensive.

Mr. Morehead stated that in Newark's current code both continuous noise and testing by 24 hour equivalent were specified and asked why the City would do that and did it make sense. Mr. De Rocili replied it was because a 24 hour equivalent could be used for continuous noise. In a situation with more intermittent noise, more than a 24-hour average may need to be taken or a 24-hour criteria may be used to determine what the actual noise level was. Continuous meant that somebody had determined it was continuous and decided how long a period of time it was to be measured to determine the LEQ. This was for stationary sources.

Mr. Morehead asked with regard to San Diego, how testing would occur if the complaining property were further in the district and not immediately adjacent. Mr. De Rocili stated they would go to the boundary of the sound source and do the measurement as that was the boundary between the two zoning districts. He had asked if there was a street complaint, where would they actually collect the measurement, and they said it would be at the boundary of the source. It certainly would be the boundary of the zoning district. Mr. Morehead stated it did not appear to be what their law said. He understood it said for a situation where there was a boundary complaint, they would average the

numbers. But it did not seem to indicate to him that the inside of the boundary or well inside of the boundary would be the same issue. Mr. De Rocili said they did not take measurements inside the boundary, but only at the boundary. He stated he asked that question and they went to the boundary. He asked them if they did not know the boundary how they would do it. They said they went to the closest thing they could get. If there was a fence or fence line, they were satisfied that they were at the boundary. They took their measurements at the boundary. Mr. Morehead said their law said it should be unlawful for any person to cause noise at any location in the city on or beyond the boundary of the property on which the noise was produced. Mr. De Rocili reiterated San Diego measured at the boundary.

Ms. Hadden reminded everyone this work was a direct result of the City's experience with the proposed data center and concerns that constituents brought forward. She thought her request was fairly simple and she only wanted to look at and perhaps modify the sound ordinance as applied to single family residential and other residential areas of the city. At no point did she recommend any change to any commercial or other segment of the community. She stated that was her goal. She wanted to keep this simple because she thought it was a very small piece of the sound ordinance. She further stated she did not want to see it all tangled up in other things. She stated she believed it was okay that Newark was more stringent when looking at the data than San Diego. She hoped Council would agree after going out, taking sound measurements and talking to other people that have, that to lower the night time residential noise limit between 9PM to 8AM for Newark to 42 dB was reasonable. San Diego's complaints in a 12-month period were six to eight complaints. That was not bad at all. The loudest complaint was pool pumps. Newark did not have that and was not that kind of community.

Ms. Hadden thanked Mr. De Rocili for compiling the data and bringing it forward because it really made things a lot clearer for her. She did not think that Newark could compare itself to smaller municipalities such as Milton because it had different demographics. Comparing Newark to Rehoboth might be more realistic on a seasonal basis because they had the same kind of things that could potentially happen. Her goal tonight was to direct staff to change the ordinance to 42dB between 9PM to 8AM based on the information that had been presented previously and based on her own studies going into the neighborhoods. However, she felt any unintended consequences should be addressed by council if a definite pattern emerged.

Mr. De Rocili thanked Ms. Hadden. He referenced the Swarthmore College study which was done in 2014. He read through the study and the sound measurements that they were experiencing through three locations throughout Newark: 41.1 to 66dB at 54 Shull Drive (most ranged between 50 and 60dB), 42 to 52.1dB at 604 Apple Road (most were in the mid to upper 40s) and 41.7 to 50.7dB at 907 Alexandria Drive (most were in the mid to upper 40 range).

Mr. De Rocili stated that after talking to San Diego staff, they stated most felt that 40dB was too low as there was normal outdoor noise (i.e. children playing on a lawn) that could exceed that reading. When there was a conflict between two neighbors, their Code Enforcement would write the matter up and pass it along. It became a problem when the regulatory level or the noise limit was below the background noise because the source of sound was hidden below the background noise. It was then hard to determine what was normal community noise and activities versus the other issues and how it played out with the complaint. Ms. Hadden stated she was open to discussion from council on the exact figure they would like to decide upon.

Ms. Sierer asked if the City knew the typical background number. Mr. De Rocili stated there was a "range." There was not a study for Newark that defined the background level in the different districts.

Mr. Gifford asked for two clarifications. He believed one of the time frames was incorrect and should be 7 AM. Mr. Gifford asked Mr. De Rocili if San Diego had an amount above background noise like Newark did in their code. The City of Newark was 5dB. One could not be more than 5 or 10dB above the background level. He referenced the earlier air conditioner example and asked if that portion of the code applied if they had it in

Newark. Mr. De Rocili stated San Diego did not have one of those sections. San Diego would just use the reading and apply it to the calculation.

Mr. Gifford questioned if Newark's raw noise level was 48dB or similar, would the City still be able to apply its delta rule to that situation. Mr. De Rocili reiterated that background noise was not constant, it floated. Mr. Gifford confirmed with Mr. De Rocili that a measurement could be taken and an evaluation made.

Mr. Gifford stated that while looking at the Swarthmore study he noted that for the 604 Apple Road, there was a figure of the hourly equivalent and so forth. The summary at the bottom of the page said that the equivalent was the average noise level occurring within each hour and was not the average of the maximum and minimum. Rather it was evident from the figures that the average was closer to the minimum with occasional transient loud events contributing to the average value. What the City was trying to control was continuous noise. So the fact that the numbers ranged like this was due to traffic and trains, which the City could not control. The City was after a continuous number.

Mr. Gifford noted the other location mentioned was on property close to a road. The ambient noise levels were considerably higher. This was not surprising given the dominance of traffic noise at these locations and suggested that the ambient noise measurements made in the yards of the residences represent a lower base line that should be considered with regard to the noise ordinance. The City did not regulate traffic noise, trains or anything of that nature. The City was concerned with continuous sound that would be a problem for the person living there from a new source. So he thought Council needed to stick to the concept of continuous sound from a new source that someone would have to live with permanently. Mr. De Rocili questioned if the hypothetical facility or manufacturing next to the residential was in fact generating continuous noise because sometimes that was not the case. The reasons for that were cycling of equipment, shift work or different processes that may happen on a manufacturing site. Depending on who the manufacturing company was in this hypothetical comparison, they would have to establish what was continuous and what the temporal changes were, such as traffic, rail, road, cycling of equipment, etc. To get to that continuous number related to how long one recorded to get a sample and also what that data said. Because there was the other part, which was the spectral part (frequencies). One could determine with these instruments what was dominating the sound. That would have to be calculated based on the specific situation to determine what the continuous number would be.

Mr. Morehead reiterated the City was concerned with stationary sources. He stated he understood about the frequency and had mentioned that at the last workshop. He supported Ms. Hadden's request to a quick fix single family night time level of 42dB. He felt the City could go back and fix some of the rest of the issues. One of the things for example that was missing was the categorization of the BLR zoning category in the definitions. He felt things like that in Newark's code needed to be cleaned up.

Mr. Ruckle asked for Mr. De Rocili's recommendation. Mr. De Rocili stated he supported a 2dB reduction, day time and night time. He recommended a 3dB drop for businesses with day time 63 to 60dB and a 4dB drop from 59 to 55dB at night. For industrial and manufacturing/office/research, the City was at 85dB and a drop to 80dB was recommended. The reason for that was the OSHA sound level requirement for manufacturers regulated under OSHA was 85dB. At 85dB, the employer had to do many things under OSHA regulations to protect their employees. He felt that to drop that number to 80dB below OSHA action level, the source was not putting that industry/manufacturing situation where it might trigger an OSHA response in terms of what they have to do under the regulation. That was why they recommended the 5dB drop under industrial, office, research and manufacturing, etc. They recommended creating a new category for all other the districts and make it as strict as residential, 55 and 50dB.

Ms. Sierer stated the City had Compliance Environmental doing this consulting work and that she was more inclined to take the recommendation as they were the experts. She would be inclined to go beyond what Councilwoman Hadden was requesting and do more.

Mr. Markham stated one of his concerns was that he did not want this to turn into the air conditioner battle with neighbors against neighbors over exterior air conditioning units in the city. He stated he did not want sound complaints now to be due to a noisy air conditioner. He took Dr. Morgan's suggestion of doing some readings around his house. It had background noise of 45dB in the early morning hours. He would be concerned about lowering things to 42dB. This number was not related to noise, but the early morning hours when people were just getting up in the morning. He would not support 42dB, but would be more likely to support a drop to 50dB. Mr. Morehead asked if the reading Mr. Markham took included traffic and if it was continuous. Mr. Markham stated there was no traffic at the time. It was a quiet neighborhood with no noise.

Ms. Sierer asked if Ms. Hadden would be opposed to taking the consultant's recommendation and read the recommendation. Ms. Hadden stated she would be agreeable to go up to 45dB from 9PM to 7AM but still thought 50dB was too high. Ms. Sierer asked if 45dB was the background noise, should the number allowed be 50dB. Ms. Hadden stated the background was variable and the City got so many calls about noise, she would really like the number to be 42dB. The consultant was the expert, but she was concerned the human ear could not hear the drop from 52 to 50dB. Mr. De Rocili stated it varied how the human ear heard, but could recognize the difference between 1 and 3dB. The instrument that one would use could read 2dB. It could read down to tenths of decibels. If a criteria was used, it would be measured. That meter could read the difference between zero and two.

Mr. Morehead stated Council was talking about permanent stationary sources, not variable traffic. He felt they had to keep that clear because they were talking about new sources. In his opinion, 42dB made perfect sense.

Ms. Sierer suggested that a loud television in somebody's apartment where the window was open could be problematic at 42dB.

Mr. Markham asked how large a typical property lot was in San Diego as it made a big difference how close someone was to their neighbor. Mr. De Rocili stated San Diego was very large, had a lot of acres and there was a military base. There were different districts and uses. In their criteria under land use, there was a section called all other residential which was for estates. However he was unsure of the acreage for this zoning. San Diego rarely used the "all other residential" criteria. Most were either single family, multiple family, commercial, or industrial/agricultural. However, he did not have a definitive answer for the lot size for the majority of residences in San Diego.

Mr. Gifford stated the Swarthmore Report was the only study the City had in town with an actual calibrated instrument of high quality. Council was "throwing around noise levels" and what the actual background noise was and gave some minimums and maximums. Since Mr. De Rocili had read the study, Mr. Gifford asked him what the conclusion for the background was. Mr. Morehead stated it ranged from 32 to 42dB on one property with the comment that the average equivalent was closer to the minimum. Mr. De Rocili stated on the last page, next to the last paragraph, it said the average ambient sound levels were in the range of 42 to 52dB in the residential neighborhood north of the STAR Campus. This was for ambient sound overall with day time and night time measurements taken.

Mr. Gifford stated he had visited a location where the level was at 55dB and it was incredibly loud across the boundary from that property. Even a half mile away, it was still very present at that continuous source. His concern was that if there was something at 50dB, it was going to really cover up whatever was there before. People would not be able to hear some of those natural sounds that would normally be heard. A train might go by, but it passed and then it was gone and the normal background noise was left.

Mr. Gifford stated when at 50dB, for example, a continuous noise source next door in an industrial area would cover up some of that normal background noise pretty significantly. Continuous manufacturing like a chemical facility, not just manufacturing noise that was only during the day time. Mr. De Rocili stated it could be in the background or below the background noise and that was what the City would want it to be.

Mr. Gifford said he mentioned this at the last meeting. The City had such a large band for night time that it varied a lot in there. But there was a very quiet period at night that Newark had around town. It was his opinion if there was the continuous source that never stopped, that peaceful time could be disturbed, even if it was only four hours in the middle of the night. He thought that was why Ms. Hadden and Mr. Morehead were leaning toward the lower numbers. He noted the problem Council was dealing with was continuous noise sources that might be a problem for years and years for somebody. If it ever affected a portion somewhere in this city, how did Newark avoid that situation? Maybe it was not just changing it to 42dB, for that whole time period. But was there another approach? He thought that was why there were other tiers in these noise ordinances. He asked if that was something that the City could have in its code to avoid that continuous noise source. Mr. De Rocili replied that the City would want that continuous noise source to be below the background as an objective. They would want them to come in during an application, for example, and demonstrate they could meet the ordinance criteria. To do that, they would have to decide how to do it in terms of what equipment to use, to put it in a building to mask the sounds, etc.

Mr. Gifford stated that Mr. De Rocili would not argue that it would be quieter in the neighborhood if the City had a middle of the night ordinance that had a lower number that was either just above or at the background level. They could not go to 50dB if the decibel limit was 42dB for a couple hours in the middle of the night. Mr. De Rocili replied if the number was set too low then somebody may spend money to do a study and could come in and demonstrate the ordinance level was not fair. There were other community noises that were the actual source above the regulatory level which would be the noise limit. Therefore, they were going to be under the ordinance, but that did not mean the community was. He asked how that would be enforced and if the City would tell people they could not play out on their lawns at certain times. Mr. Gifford stated he was referring to the hours between 1 AM and 5 AM. Those were the quietest times looking at any of those numbers. Mr. Gifford said most people were not going to be playing a radio at 2AM. They were not going to be making noise on their own property. He believed it was best to restrict to ensure that the City only affected that continuous noise source but had the maximum freedom during other parts of the day.

Ms. Hadden agreed with Mr. Gifford. She asked if Council would consider revising the recommendation to stipulate, for night time residential areas, 9 PM to 12 AM could be 50dB, 12 AM to 5 AM could be 42dB and 5 AM to 7 AM could be 50 dB.

Mr. Gifford asked if San Diego said anything about the 45dB level being a problem. Mr. De Rocili stated 45dB would be used for the calculation. That would be when a single family residential property in the evening between 7PM to 10PM was complaining, they would use the 45dB.

Mr. Gifford stated San Diego's industrial was 75dB and asked if that seemed low. He was not interested in changing the City's recommendation below 80dB. Mr. De Rocili stated the 75dB was used in the calculation. If it was a situation of a single family at night time complaining against an industrial site, they have a lower number because they have a balance. Mr. Gifford stated that made sense.

Mr. Gifford noted that he agreed with Ms. Hadden to say maybe there was that 12AM to 5AM time period where the City could put something in and have the other tier at 50dB so 5 AM to 7 AM and all the way to midnight it will be 50dB.

Mr. Markham stated looking back through the documentation, he had a memo from the City Secretary in April 2014. He stated if Chapel Hill, NC had what Mr. Gifford was talking about with the 12:01 AM to 6:59 AM lower time period.

Mr. Gifford felt the City should keep the time until 7 AM because trash collection services looked at those early morning times and started when permitted. If New Castle started at 6 AM, they started at 6 AM. So the City definitely wanted that 7AM.

Ms. Sierer stated Council had on the table at the moment to go with all of Compliance Environmental's recommendations, except to insert for nighttime on

residential and university from 9 PM to 12 AM, 50dB; 12 AM to 5 AM, 42dB; and 5 AM to 7 AM, 50 dB. Mr. Gifford and Ms. Hadden concurred.

Ms. Sierer asked if there was any other discussion at the table.

Mr. Ruckle suggested 1 AM. The only concern he had was that it would make the City have the strictest noise ordinance in state of Delaware. Ms. Sierer stated the City of Newark likes to “pilot” things. Mr. Ruckle was worried about what kind of effects it was going to have on other businesses wanting to come to the City of Newark when they realized the City of Newark was the strictest community. He said he also did not want noise and wanted people to be able to sleep.

Mr. Markham stated he did want to point out the Chapel Hill, NC strictest time period is at 45dB. His concern was about neighbor and neighbor with air conditioners because they ran all night no matter what. There was a mixture in the City with stationary units versus window units. He stated this was not law yet, but one request he would have if this became a law was that staff monitored this very carefully, because he did not want a spike in noise complaints due to items that currently existed.

Ms. Sierer opened the floor to public comment.

4. John Morgan, District 1, was very pleased by the discussion that occurred at the table tonight. He felt noise limits especially for night time noise were not going to be a problem unless somebody complained. He felt the police had discretion in enforcing complaints and could resolve neighbor versus neighbor issues. He felt it was important to keep in mind that the averages that got determined in the three locations were hourly averages which included one or two trains, with huge spikes and that was not typical background noise. He suggested the air conditioner issue could be resolved with a specific exemption in code for air conditioners in good working order just as there was for lawn mowers. He did not think the issue of what happened if a specific source of noise was below the background, but above the limit, should be a problem because if the City could not identify the noise as coming from a specific source, it could not be enforced anyway. He liked the idea of three tiers whether the cut-off was midnight or 1 AM. He felt this could be focused on specific kinds of residential zoning.

Nick Wasileski, District 3, thanked everybody for the consideration put into this as it was a difficult topic and could get really complicated. His concern was continuous noise. He believed under the recommendations the City had now, if there was 24 hours a day of 50dB noise that would be really tiresome for people. He liked Ms. Hadden’s suggestion of 42dB as the baseline. He believed 50dB was a little high and that maybe the 42dB could be extended a few hours.

Jim McKelvey, District 4, admired the work that had been done and the consideration being given and felt he understood it better. He felt the compromise on the hours made a lot of sense. Being strict with noise ordinance did not sound like a problem to him. He was not bothered by a 42dB day time limit, but felt 55dB sounded too noisy. He felt being restrictive protected property values and maintained the quality of life that residents valued so much.

5. Ms. Sierer returned the discussion to the table and asked Ms. Hadden to summarize a potential direction to City staff.

Ms. Hadden stated she would like to direct City staff to take the recommendation from the consultant and as a compromise to revise the night time residential limits from 9 PM to 1 AM to 50dB; 1 AM to 5AM, 42dB; and 5 AM to 7 AM to 50db.

Ms. Sierer stated she would support that recommendation.

Mr. Ruckle asked if there was any way Council could raise it from to 42dB. He believed 45dB was suggested. He believed the expert was saying that there was a lot of noise and to consider 45dB. Ms. Hadden replied she would like to keep it at 42dB for those hours of the evening.

Ms. Houck stated she believed staff had the direction, this would have to come before Council again and there would be a public hearing. There was a possibility that Council would hear something they did not hear already before adopting a change.

Ms. Sierer stated Council was giving staff recommendations to produce the ordinance to bring before Council and the public.

Mr. Morehead asked if Council also wished to consider and direct for an exemption for residential air conditioners in good working order. All of Council with the exception of Mr. Markham concurred. He stated he was not going to say yes or no because he felt it sounded like it was a vote.

Ms. Houck stated she wanted to make sure because there were other items Mr. Herron was asked to address. Mr. Herron answered some previous questions due to his absence at the first meeting as follows:

- The Alderman's Court would make decisions on penalties. If Council wanted, they could change the range of penalties, but the Alderman's Court would make the decision within the range.
- Regarding the general provisions about yelling, shouting, hooting, whistling or creating a racket, in his experience, he had never had a case where someone had been charged with that.
- In reference to a question about the exemptions for noises resulting from the provision of municipal services, he thought that might have been in connection with the refuse outsourcing topic, which had been resolved.
- Regarding the question about Sec. 20A-3(b)5 which talked about the warnings and notice to a landlord who was not an occupant of the residence, he believed there was an issue raised about one of the permitted forms of notice being posting on the property. He believed there was a concern that if an owner not an occupant was responsible, he or she would not be aware of the posted notice. That could be addressed by simply omitting that as a permitted form of notice in the ordinance.
- In regards to the question of what would happen in comparison to state law, if state law was more restrictive, the state law would apply, but on the chart it did not appear that was the case.

Ms. Sierer asked if Mr. Herron's recommendation on hooting and yelling and hollering would be to remove that. Mr. Herron stated there were problems with those. He would review per Council's request. Mr. Morehead stated the provision was specifically on public streets, so the question was about if it happened on private property.

Mr. Gifford stated last time Mr. De Rocili included other smaller issues like certain frequencies and additional things in City Code that were recommended. Mr. De Rocili stated there were definitions that had not been updated since 1988. There had been changes and some referenced things that did not exist anymore, etc. He recommended a clear definition of the sound meter that was capable of meeting the requirements. Mr. Gifford asked the common sense language be included. There was a frequency issue (i.e. reciprocating noises). Ms. Sierer asked Mr. De Rocili to bring the recommendations forward based on verbiage and language in the Code.

Ms. Sierer thanked everyone for their work.

6. Meeting adjourned at 7:28 p.m.

Renee K. Bensley
Director of Legislative Services
City Secretary